IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 2028 OF 2004

Smt. Kalpana V. Shah & Anr. .. Petitioners

v/s.

Bipin Gandhi & Anr. .. Respondents

V.V. Marwadi for Petitioners.

Ajay Khandhar for Resp. No. 1.

S.S. Katdare, APP.

CORAM: S.K. SHAH, J.

DATE : 3rd May, 2006.

P.C.

By this petition the Petitioners who are original accused No. 3 and 5 challenges the orders passed by the Sessions Court on 15/3/2004 whereby the order of Magistrate rejecting the application filed by the Petitioners recalling the process issued under section 138 of the Negotiable Instruments Act was confirmed. The brief history of the proceeding is that the Magistrate has issued the process. Thereafter the Petitioners filed application for recalling of the process. The Magistrate refused to recall the process. Thereafter the revision was filed before the Sessions Court whereby the revision was dismissed.

Thereafter the Magistrate recorded the plea somewhere in July 2004 and original complainant filed evidence in the form of affidavit of

examination in chief on 7/10/2004. In the meantime on 5/10/2004 the present petition came to be filed and interim stay order was obtained on 14/10/2004. The contention of the petitioner is that the process issued under section 138 of the Negotiable Instruments Act is liable to be recalled. In view of the decision of the Apex Court in the case of SMS Pharmaceuticals Ltd., reported in 2005 Maharashtra Law Journal 731 the averments made in the complaint is not sufficient for issue of process against the petitioner who are accused No. 3 and 5 in the complaint. However I am not inclined to go into that as it is not necessary considering the stage of the proceeding before the Magistrate. The proceeding before the Magistrate are at the stage of recording of the evidence after recording of the plea of the accused persons. Once the plea is recorded, it is, well established that the accused has to undergo the trial for reaching to the logical conclusion of the case. It is not necessary to interfere in this respect at this stage. Therefore the writ petition is dismissed. It is made clear that none of the observation made hereinabove shall have any bearing on the merits of the case. The interim stay granted in this case stands vacated.

The criminal application No. 2293 of 2004 shall be separated from other three cases namely Criminal Application No. 2027 of 2004, 2028 of 2004 and 2029 of 2004.

(S. K. SHAH, J)